

SENATE BILL 3138

By McNally

AN ACT to amend Tennessee Code Annotated, Sections 8-34-101(46)(B), 8-34-206(d), 8-34-321, 8-35-823, 8-36-105, 8-36-201(a)(2), 8-36-205(a)(2)(E), 8-36-209(a)(1), 8-36-504(c), 8-36-802(c), 8-36-805(2), 8-36-805(5), 8-36-821(c), 8-37-104, 8-37-115(a), 8-37-214(g), 8-37-219, 8-37-506; and Title 8, Chapter 35, Part 2, and Title 8, Chapter 35, Part 4, relative to pensions and compensation programs for public officers and employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-34-101(46)(B), is amended by deleting the last two sentences thereof in their entireties and by substituting instead the following:

This definition shall be in effect from and after July 1, 1986, and shall be applied to all persons seeking membership in the retirement plan as a teacher from this date forward.

It is further provided that any teacher who has taught in the public schools for a period of at least one (1) year who transfers to a position within the Tennessee public school system that does not require a teacher's certificate shall continue participation in the retirement plan as a teacher;

SECTION 2. Tennessee Code Annotated, Section 8-34-206(d), is amended by adding the following new sentences at the end thereof:

Any employer that adopts the noncontributory provisions of this section on or after July 1, 2010 may reserve the right within its adopting resolution to thereafter discontinue the noncontributory provisions for all its current and future employees. To thereafter discontinue the noncontributory provisions, the chief governing body of that employer must pass a resolution, legally adopted and approved by a two-thirds (2/3) majority of

that body, to discontinue the noncontributory provisions for all its current and future employees and to have the contributions made by the employees treated as employer contributions pursuant to § 8-37-216. Any such resolution shall set forth the effective date of the discontinuance; provided, that the date shall be on the first day of any quarter following a minimum of three (3) months' notice to the retirement system. Any resolution to discontinue the noncontributory provisions that is adopted pursuant to this subsection shall be irrevocable and the employer shall not be permitted to elect at a later date to provide the noncontributory provisions of this section.

SECTION 3. Tennessee Code Annotated, Section 8-35-204(b)(3), is amended by deleting the words and figures "seven and one-half percent (7 1/2 %) interest" and by substituting instead the words and figures "interest at the rate provided for in § 8-37-214".

SECTION 4. Tennessee Code Annotated, Section 8-35-209, is amended by adding the following new subdivision at the end thereof:

(h) The board of directors of any participating association referenced in subsections (a) and (g) of this section may pass a resolution to extend retirement coverage to all non-administrative employees of the respective association. If such additional coverage is sought, the coverage shall apply to all such employees and the employees shall participate in the same manner and shall be eligible for the same benefits as the administrative employees of the association. Such employees shall further be entitled to credit for such prior service as approved by the board of directors of the respective association.

SECTION 5. Tennessee Code Annotated, Section 8-35-211, is amended by deleting from subsection (a) thereof the words and punctuation "or should such employer cease to exist as a separate legal entity,".

SECTION 6. Tennessee Code Annotated, Section 8-35-211, is further amended by adding the following new subdivision at the end thereof:

(f) Should any employer participating under this chapter cease to exist as a separate legal entity, the benefits payable on account of service rendered as an employee of the entity shall be determined in accordance with the provisions of this section.

SECTION 7. Tennessee Code Annotated, Section 8-35-218(a)(4), is amended by deleting the same in its entirety and by substituting instead the following:

(4) Employees who are members of the retirement system on the date such withdrawal resolution becomes effective shall continue membership in the retirement system until termination of employment, with the employer being liable for contributions and benefits as contained herein;

SECTION 8. Tennessee Code Annotated, Section 8-35-218(a)(8), is amended by deleting the same in its entirety and by substituting instead the following:

(8) Any employee who, upon termination of employment with such employer, withdraws service rendered to that employer shall not later be permitted to establish that service with the retirement system, unless the employer rejoins the retirement system pursuant to subdivision (a)(14) below. The establishment of such service shall be subject to the provisions of § 8-37-214;

SECTION 9. Tennessee Code Annotated, Section 8-35-218(a)(14), is amended by deleting the same in its entirety and by substituting instead the following:

(14) An employer may elect at a later date to rejoin the retirement system in accordance with § 8-35-201; provided, that any such resolution to rejoin shall be irrevocable and the employer shall not later be permitted to withdraw under the provisions of this section. The governing body of any such employer that rejoins the

retirement system may pass a resolution to permit its employees to claim service credit for service rendered during the period from the date the employer withdrew from the retirement system through the date the employer rejoined the retirement system, if the employer authorizes the credit and assumes the employer liability for such prior service.

Upon the authorization and assumption of the employer liability, any employee who meets the requirements of § 8-35-203(a)(2)(A) and (B) shall be entitled to receive credit for such service by making a lump sum payment of the contributions such employee would have made had such employee been a contributory member during the period claimed, plus interest at the rate provided for in § 8-37-214. The employer shall not have the option of paying the employee contributions required under this subdivision.

SECTION 10. Tennessee Code Annotated, Section 8-35-218(b)(5), is amended by deleting the same in its entirety and by substituting instead the following:

(5) The political subdivision may elect at a later date to have the instrumentality rejoin the retirement system in accordance with § 8-35-201; provided, that any such resolution to rejoin shall be irrevocable and the instrumentality shall not later be permitted to withdraw under the provisions of this subsection (b). The employees of any such instrumentality that rejoins the retirement system may, pursuant to the terms and conditions described in subdivision (a)(14) of this section above, establish service credit for service rendered during the period from the date the instrumentality withdrew from the retirement system through the date the instrumentality rejoined the retirement system.

SECTION 11. Tennessee Code Annotated, Section 8-35-220(a), is amended by deleting the words “director and administrative employees” and by substituting instead the word “employees”.

SECTION 12. Tennessee Code Annotated, Section 8-35-223(a)(2), is amended by deleting the words “administrative employees” and by substituting instead the word “employees”.

SECTION 13. Tennessee Code Annotated, Section 8-35-224(a)(2), is amended by deleting the words “administrative employees” and by substituting instead the word “employees”.

SECTION 14. Tennessee Code Annotated, Section 8-35-225(a), is amended by deleting the words “its director and administrative employees” and by substituting instead the word “employees”.

SECTION 15. Tennessee Code Annotated, Section 8-35-227(a)(2), is amended by deleting the words “administrative employees” and by substituting instead the word “employees”.

SECTION 16. Tennessee Code Annotated, Section 8-35-229(a)(2), is amended by deleting the words “administrative employees” and by substituting instead the word “employees”.

SECTION 17. Tennessee Code Annotated, Section 8-35-230(a)(2), is amended by deleting the words “administrative employees” and by substituting instead the word “employees”.

SECTION 18. Tennessee Code Annotated, Section 8-35-233(a)(2), is amended by deleting the words “administrative employees” and by substituting instead the word “employees”.

SECTION 19. Tennessee Code Annotated, Section 8-35-235(a)(2), is amended by deleting the words “administrative employees” and by substituting instead the word “employees”.

SECTION 20. Tennessee Code Annotated, Section 8-35-226(c), is amended by deleting the last sentence thereof in its entirety and by substituting instead the following:

In no event shall the benefit payable on such service exceed that provided under § 8-36-209(a)(1)(A), §8-36-209(a)(1)(B) or 8-36-209(a)(1)(F), depending upon which option is exercised by the chief legislative body. Such benefit is subject to the limitations of § 8-36-102.

SECTION 21. Tennessee Code Annotated, Section 8-35-240(a)(2), is amended by deleting the words “administrative employees” and by substituting instead the word “employees”.

SECTION 22. Tennessee Code Annotated, Section 8-35-250(a), is amended by deleting the second sentence thereof in its entirety and by substituting instead the following:

Employees who were employed prior to this date will continue to be eligible for the noncontributory provisions of § 8-34-206; provided, however, any such employee who thereafter leaves or is discharged from employment with that employer and later returns to employment with that employer shall not be eligible for the noncontributory provisions of § 8-34-206.

SECTION 23. Tennessee Code Annotated, Section 8-35-403(f), is amended by deleting subdivision (1) thereof in its entirety and by substituting instead the following:

(1) The employee is employed in a position covered by the Tennessee consolidated retirement system;

SECTION 24. Tennessee Code Annotated, Section 8-35-403(f), is further amended by deleting subdivision (5) thereof in its entirety and by substituting instead the following:

(5) The employee must pay to the Tennessee consolidated retirement system a sum equal to twelve and sixty-five hundredths percent (12.65%) of the employee's

earnable compensation during the period of the employee's membership in the optional retirement program, plus interest on the amount at the rate provided in § 8-37-214;

SECTION 25. Tennessee Code Annotated, Section 8-35-403(f)(6), is amended by deleting from the first sentence thereof the words “taxed deferred”, and by further deleting the words “a tax deferred” wherever the same may appear in that subdivision and by substituting instead the words “an eligible”.

SECTION 26. Tennessee Code Annotated, Section 8-35-823, is amended by deleting the words “administrative employees” and by substituting instead the word “employees”.

SECTION 27. Tennessee Code Annotated, Section 8-36-105, is amended by deleting the figures “§ 8-37-204” and by substituting instead the figures “§ 8-37-214”.

SECTION 28. Tennessee Code Annotated, Section 8-36-201(a)(2), is amended by deleting the same in its entirety and by substituting instead the following:

(2) Any member in Group 1 who has creditable service in a Group 1 position covered by the mandatory retirement provisions of § 8-36-205 and who is entitled to the supplemental bridge benefit established pursuant to § 8-36-211 shall be eligible for service retirement upon attainment of fifty-five (55) years of age and upon completion of twenty-five (25) years of creditable service; provided, that the service rendered while the member was in a Group 1 position covered by the mandatory retirement provisions shall be independent of all other creditable service for the purpose of calculating the member's retirement benefits under § 8-36-206.

SECTION 29. Tennessee Code Annotated, Section 8-36-205(a)(2)(E), is amended by deleting the second sentence thereof in its entirety and by substituting instead the following:

If the mandatory age requirement established by the political subdivision is less than the age requirement for receipt of old age and survivors benefits under Title II of the Federal Social Security Act, such resolution must further contain an authorization granting the

supplemental bridge benefit and the acceptance by the political subdivision of the liability associated with the bridge benefit.

SECTION 30. Tennessee Code Annotated, Section 8-36-209(a)(1), is amended by adding the following new subdivision at the end thereof:

(F) Notwithstanding any other law to the contrary and commencing on July 1, 2010, the minimum service retirement allowance with respect to creditable service established pursuant to the provisions of § 8-35-226 shall equal twenty dollars (\$20.00) per month for each year of such creditable service. On July 1, 2011 and on each July 1 thereafter, the minimum retirement allowance provided for in this subdivision (a)(1)(F) shall be adjusted pursuant to the cost-of-living provisions in § 8-36-701(b)(1) and (2). The provisions of this subdivision (a)(1)(F) shall not apply unless the chief legislative body of the respective city, special school district or county passes a resolution authorizing the provisions of this subdivision (a)(1)(F) and accepting the liability therefore. Any such resolution shall apply to current and future retirees and shall become effective on the first day of any quarter following the filing of the resolution with the retirement system. No retroactive benefits shall be paid under the provisions of this subdivision (a)(1)(F). For cities, special school districts and counties that do not elect this provision, the minimum benefit for service established pursuant to § 8-35-226 shall be determined pursuant to subdivision (a)(1)(A) or (a)(1)(B) of this section, depending upon which option is exercised by the respective city, school district or county.

SECTION 31. Tennessee Code Annotated, Section 8-36-504(c), is amended by deleting subdivision (2) thereof in its entirety and by redesignating the subsequent subdivisions accordingly.

SECTION 32. Tennessee Code Annotated, Section 8-36-802(c), is amended by deleting the same in its entirety and by substituting instead the following:



(c) The excess, if any, of the retired member's accumulated contributions at retirement over the sum of the retirement allowance payments received by the retired member shall be credited to the retiree as accumulated contributions.

SECTION 33. Tennessee Code Annotated, Section 8-36-805(2), is amended by deleting the word "personnel" from the last sentence thereof and by substituting instead the words "human resources".

SECTION 34. Tennessee Code Annotated, Section 8-36-805(5), is amended by deleting all the language immediately before the colon ":" and by substituting instead "The head of the employing entity or the head's designee".

SECTION 35. Tennessee Code Annotated, Section 8-36-821(c), is amended by deleting the same in its entirety.

SECTION 36. Tennessee Code Annotated, Section 8-37-104(a)(7), is amended by deleting the same in its entirety and by substituting instead the following:

(7) The board of trustees shall have the power and authority to purchase or sell domestic and international stock index futures contracts for the purpose of asset allocation relating to the equity portfolios. Stock index futures contracts shall not be utilized for purposes of speculative leveraging. For purposes of this subdivision (a)(7), "speculative leveraging" is defined as buying financial futures where the amount of the contract obligation is an amount greater than the market value of the system's cash and short-term securities. The total amount of the system's financial futures contract obligation shall not exceed ten percent (10%) of the market value of the system's total assets. The sum total of the domestic and international equity portfolios, together with the value of the stock index futures contract obligation, should be within the asset allocation range for domestic and international equity securities. The board may use

cash and obligations of the United States government or any of its agencies to meet the variation margin requirement of such futures contracts;

SECTION 37. Tennessee Code Annotated, Section 8-37-104(a)(10)(C), is amended by deleting the same in its entirety and by substituting instead the following:

(C) Records of the retirement system relating to the identity of the name of the private equity investment vehicle used, such as the name of any limited partnership, the name of the funds-of-funds manager and title of the fund, the amount invested in the vehicle, or the present value of the investment shall be open to public inspection pursuant to title 10, chapter 7, part 5; provided, however, that records relating to the retirement system's review of any private equity investment shall not be public to the extent that:

(i) The records contain confidential information provided to the retirement system or analysis or evaluation by the retirement system; or

(ii) Disclosure of the records would have a potentially adverse effect on the retirement system's private equity program, the value of an investment, or the provider of the information.

SECTION 38. Tennessee Code Annotated, Section 8-37-115(a), is amended by deleting the same in its entirety and by substituting instead the following:

(a) The board of trustees is hereby authorized to create one (1) or more not-for-profit corporations, limited liability companies, limited liability partnerships, or trusts for the purpose of acquiring, holding title to, and collecting income from real property on behalf of the retirement system pursuant to § 8-37-104(a)(9). The board of trustees is further authorized to create one (1) or more not-for-profit corporations, limited liability companies, limited liability partnerships, or trusts for the purpose of acquiring, holding title to, and collecting income from private equity investments on behalf of the retirement

system pursuant to § 8-37-104(a)(10). The board is authorized to select a name for any such organization created pursuant to this subsection (a). The organization shall have its own board of directors which shall consist of some or all of the members of the board of trustees. The board of the organization may select its own chair with the approval of the chair of the board of trustees.

SECTION 39. Tennessee Code Annotated, Section 8-37-214(g)(1), is amended by deleting the words “a tax deferred” wherever the same may appear in the first two sentences thereof and by substituting instead the words “an eligible”.

SECTION 40. Tennessee Code Annotated, Section 8-37-214(g)(1), is further amended by deleting subdivisions (A) and (B) thereof in their entireties and by substituting instead the following:

(A) Amounts transferred to the Tennessee consolidated retirement system directly from a retirement account that are eligible for rollover treatment under the Internal Revenue Code; or

(B) Lump sum distributions received by a member from a retirement account that are eligible for rollover treatment under the Internal Revenue Code and which are transferred by the member to the Tennessee consolidated retirement system within sixty (60) days following the member's receipt of such lump sum distribution.

SECTION 41. Tennessee Code Annotated, Section 8-37-219(a), is amended by adding the words “or any non-spousal beneficiary” immediately after the words “any spouse”.

SECTION 42. Tennessee Code Annotated, Section 8-37-219(b), is amended by deleting the period “.” at the end of subdivision (b)(2) and by substituting instead the punctuation and word “; or”.

SECTION 43. Tennessee Code Annotated, Section 8-37-219(b), is further amended by adding the following as a new subdivision at the end thereof:

(3) For non-spousal beneficiary transfers, an individual account or annuity treated as an inherited individual retirement account under section 402(c)(11) of the Internal Revenue Code or any other plan eligible under the Internal Revenue Code to receive such direct rollovers from a qualified plan; provided, that the plan accepts such direct rollovers.

SECTION 44. Tennessee Code Annotated, Section 8-37-219(c), is amended by adding the words “or account” immediately after the words “receiving plan”.

SECTION 45. Tennessee Code Annotated, Section 8-37-506, is amended by deleting the same in its entirety and by substituting instead the following:

Effective for the payroll period ending July 1, 2011 or on such later date as the state treasurer may otherwise provide, the contributions described in this part shall be paid by the employer to the retirement division by electronic funds transfer. The payroll data associated with such electronically transferred contributions shall be filed with the division concurrent with the contributions through such electronic medium as shall be prescribed by the treasurer. The director of the retirement system may waive the requirement to submit such contributions or payroll data by electronic means for employers that are unable to comply despite good faith efforts or due to circumstances beyond the employer’s reasonable control.

SECTION 46. Tennessee Code Annotated, Title 8, Chapter 35, Part 4, is amended by adding the following as a new appropriately designated section:

8-35-4\_\_\_\_.

(a) Any employee or any spouse or any non-spousal beneficiary of an active, inactive or retired employee who is eligible for a lump sum payment under the provisions of this part may request the relevant optional retirement company to rollover the taxable portion of such payment directly to an eligible retirement plan.

(b) For purposes of this section, “eligible retirement plan” means:

(1) For employee transfers only, a qualified 403(a) annuity plan or a qualified 401(a) retirement plan; provided, that the plan accepts direct rollovers; or

(2) For member or spousal transfers, an individual retirement account or any other plan eligible under the Internal Revenue Code to receive such direct rollovers from a qualified plan; provided, that the plan accepts direct rollovers; or

(3) For non-spousal beneficiary transfers, an individual account or annuity treated as an inherited individual retirement account under section 402(c)(11) of the Internal Revenue Code or any other plan eligible under the Internal Revenue Code to receive such direct rollovers from a qualified plan; provided, that the plan accepts such direct rollovers.

(c) Prior to making such a rollover, the relevant optional retirement company may require the individual requesting the rollover to establish that the receiving plan or account meets the requirements of this section and the Internal Revenue Code.

(d) This section shall be administered in accordance with the direct rollover provisions of the Internal Revenue Code.

SECTION 47. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 48. Section 7 of this act shall take effect on July 1, 2010, the public welfare requiring it and shall only apply to withdrawal resolutions passed on or after July 1, 2010 pursuant to the provisions of Tennessee Code Annotated, Section 8-35-218. Section 32 of this act shall take effect on July 1, 2010, the public welfare requiring it and shall only apply to

retirees who again become members of the Tennessee consolidated retirement system on or after July 1, 2010 pursuant to the provisions of Tennessee Code Annotated, Section 8-36-802. The remaining provisions of this act shall take effect upon becoming a law, the public welfare requiring it.